93-770

NO. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

JIM EDENSO,

Petitioner

versus

HAIDA CORPORATION,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS, NINTH CIRCUIT

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ATTORNEYS FOR PETITIONER,
JIM EDENSO

QUESTION PRESENTED

1. Whether, in conflict with the American Rule and the specific allocation of costs and fees set forth in the 1853 Fee Act, 28 U.S.C. 1923(a), the Bankruptcy Court erred in awarding attorney's fees to the Haida Corporation, a debtor, against Jim Edenso, a creditor, after a contested unsecured claim determination.

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The only parties are listed in the caption.

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IN THE

Supreme Court of the United States

October Term 1993

No.

JIM EDENSO,

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v.

HAIDA CORPORATION,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioner, Jim Edenso, respectfully prays that a writ of certiorari issue to review the memorandum decision of the United States Court of Appeals for the Ninth Circuit, entered in this proceeding on August 5, 1993.

OPINIONS BELOW

The Honorable Herbert A. Ross, Bankruptcy Judge for the United States Bankruptcy Court for the District of Alaska, entered on March 27, 1992 a final judgment for Haida Corporation against Jim Edenso for certain costs and attorney's fees incurred by Haida Corporation in successfully defending against the unsecured claim filed by Jim Edenso. Jim Edenso timely appealed the award of attorney's fees and certain costs to the United States District Court for the District of Alaska. On December 21, 1992, the Honorable James K. Singleton, United States District Court Judge, affirmed the judgment of the Bankruptcy Court. Jim Edenso timely appealed to the United States Court of Appeals for the Ninth Circuit. On August 5, 1993, the United States Court of Appeals for the Ninth Circuit, in a memorandum opinion, affirmed the award of attorney's fees, but reversed the award of costs.

The oral transcript of the hearing on the opposition to the motion for award of costs and attorney's fees before the Honorable Herbert A. Ross, the final judgment against Jim Edenso of the United States Bankruptcy Court for the District of Alaska, the order from chambers of the United States District Court for the District of Alaska and the memorandum decision of the United States Court of Appeals for the Ninth Circuit are reprinted in the appendix.

JURISDICTION

The memorandum opinion of the United States Court of Appeals for the Ninth Circuit was entered August 5, 1993.

This Court has jurisdiction pursuant to 28 U.S.C. 1254.

STATUTES INVOLVED

The statutes primarily involved are 28 U.S.C. 1920 and 1923. Because this matter arises out of a bankruptcy proceeding, 11 U.S.C. 101 et seq., the Bankruptcy Code, is also involved. The award of attorney fees to the Haida Corporation was made pursu-

ant to A.S. 09.60.010 and Alaska Rules of Civil Procedure 82(a). The statutes and rules cited in this petition for certiorari are set forth in the appendix.

STATEMENT OF CASE

On August 2, 1983, the Haida Corporation employed Jim Edenso pursuant to a written one-page contract to secure financing with compensation calculated as a four percent fee plus expenses. The text of the contract is set forth in the appendix. The contract makes no provision for any award of attorney's fees in the event of a dispute.

Jim Edenso obtained an interim, bridge loan in the amount of $475,000.00 from Alaska Federal Savings & Loan for which Haida Corporation paid Jim Edenso partial, if not full, payment.

Haida Corporation filed bankruptcy on May 15, 1985 pursuant to 11 U.S.C. 101 et seq. The filing invoked the initial federal jurisdiction in this matter. Jim Edenso timely filed his Proof of Claim No. 15 seeking the principal sum of $103,316.67 for his costs and a four percent fee for a $2,475,000.00 loan guaranteed by the Bureau of Indian Affairs. Jim Edenso claimed Haida Corporation never closed this loan, entitling him to his agreed upon compensation. Haida Corporation disputed its liability to Jim Edenso. The Chapter 11 plan of the Haida Corporation was confirmed July 19, 1988. The plan provided that unsecured claims were to be paid in full, plus interest. Disputed claims, such as that of Jim Edenso, were escrowed pending determination of the claim.

11 U.S.C. Section 502(b)(1) provides the bankruptcy court shall allow a contested claim except to the extent such a claim is unenforceable against a debtor under any agreement or applicable law. After a hearing on the contested claim, the bankruptcy court found under Alaska law the claim was unenforceable and entered an order disallowing Proof of Claim No. 15 filed by Jim Edenso.

Haida Corporation then moved for an award of costs and attorney's fees pursuant to Alaska Statute 09.60.010 and Alaska Rules of Civil Procedure 82(a) and 79. Haida Corporation itemized

attorney's fees totalling $21,689.50 and costs of $3,690.64. Jim Edenso opposed the motion for costs and attorney's fees in writing and at oral arguments arguing, in part, that the bankruptcy court was not authorized to award attorney's fees nor costs in this unsecured claim determination.

At the hearing on the motion for costs and attorney's fees, the bankruptcy court stated that the claim of Jim Edenso was not brought nor litigated in bad faith. Instead, this bankruptcy claim proceeding was characterized as a garden variety type of case where the parties "weren't able to just negotiate a settlement." Relying on the decisions of the United States Court of Appeals for the Ninth Circuit in the cases of *Holiday Mobile Home Resorts v. Wood*, 803 F.2d 977 (9th Cir. 1986); *Matter of Sparkman*, 703 F.2d 1097 (9th Cir. 1983); and *In re Eastview Estates II*, 713 F.2d 443 (9th Cir. 1983), the bankruptcy court awarded Haida Corporation fifty percent of $18,000.00 in reasonably incurred attorney's fees, or the sum of $9,000.00. As well, the court awarded costs for copying, depositions and counsel travel expenses. The bankruptcy court entered a final judgment in favor of Haida Corporation against Jim Edenso in the amount of $11,669.24.

Jim Edenso timely appealed the award of certain costs and the attorney's fees to the United States District Court for the District of Alaska. On December 21, 1992, by an order from chambers, the Honorable James K. Singleton, United States District Court Judge, affirmed the judgment of the bankruptcy court without discussion or an opinion. Jim Edenso timely filed a notice of appeal and prosecuted his appeal to the United States Court of Appeals for the Ninth Circuit.

In a memorandum decision filed August 5, 1993, the United States Court of Appeals for the Ninth Circuit reversed the challenged costs:

> Because Congress has not specifically authorized bankruptcy courts "to go further" than Section 1920's list of costs, the bankruptcy court erred in awarding Haida their attorney travel expenses.

(Footnote omitted).

With respect to the attorney's fees awarded to Haida Corporation, the decision observed:

> [W]e have held that "state law governs an award of attorney's fees if state law and not federal bankruptcy law provides the rule of decision in a contested matter." In re Bybee, 945 F.2d 309, 315 (9th Cir. 1991) (quotation omitted).

The United States Court of Appeals for the Ninth Circuit then held:

> Because the bankruptcy court disallowed Edenso's claim by applying Alaska state law, Alaska state law also governs the award of attorney's fees. Under Alaska law, the prevailing party in a civil action may be awarded attorney's fees. Alaska Stat. 09.60.010 (1992); Alaska R. Civ. P. 82(a). Therefore, the bankruptcy court did not err by awarding Haida a percentage of its fees.

REASONS FOR GRANTING THE WRIT

I. The United States Court of Appeals for the Ninth Circuit has decided a federal question in a way which conflicts with applicable decisions of this Court.

The Court of Appeals for the Ninth Circuit held that state law governs an award of attorney's fees if state law, and not federal bankruptcy law, provides the "rule of decision" in a contested matter. Neither this Court, nor any other circuit court of appeals, has held in a bankruptcy proceeding that if state law provides the "rule of decision" in a contested matter, state law governs the award of attorney's fees to the prevailing party. To the contrary, in federal courts, the American Rule, codified in 28 U.S.C. Sections 1920 and 1923(a), prohibits the shifting the of litigation costs from the winning party to the loser.

In 1975 in *Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U.S. 240 (1975), this Court examined the historical origins and development of the American Rule in federal courts. Although federal courts once routinely "follow[ed] the practice with respect to awarding attorney's fees of the courts of the States in which the federal courts were located, . . .," Id., 421 U.S. at 247-248, Congress, starting in 1853, specifically prohibited the practice in law now codified as 28 U.S.C. 1920 and 1923(a). Id., 421 U.S. at 251-257. In *Pennsylvania v. Del. Valley Citizens Council*, 478 U.S. 546 (1986), this Court restated the currently applicable law as follows:

> It is well established that, under the "American Rule," "the prevailing litigant is ordinarily not entitled to collect reasonable attorneys' fees from the loser." *Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U.S. 240, 247 (1975). There are exceptions to this principle, the major one being congressional authorization for the courts to require one party to award attorney's fees to the other.[6]

---

[6] In addition to this statutory exception, courts traditionally have recognized three other exceptions to the "American Rule." First, courts can enforce their own orders by assessing attorney's fees for the wilful violation of a court order. Alyeska, 421 U.S. at 258. Second, courts are empowered to award fees against a losing party who has acted in bad faith, vexatiously, wantonly, or for oppressive reasons. Id., at 258-259. And finally, a court's equitable powers allow it to award fees in commercial litigation to plaintiffs who recovered a "common fund" for themselves and oth-

> ers through securities or antitrust litigation. None of these situations are involved in the present case. Id., at 257.

Id., at 561-562.

This Court repeatedly has demonstrated strong support for the American Rule and antipathy toward any expansion of fee shifting except where it is specifically authorized by Congress.

> Congress has not repudiated the judicially fashioned exceptions to the general rule against allowing substantial attorneys' fees; but neither has it retracted, repealed, or modified the limitations on taxable fees contained in the 1853 statute and its successors. Nor has it extended any roving authority to the Judiciary to allow counsel fees as costs or otherwise whenever the courts might deem them warranted. What Congress has done, however, while fully recognizing and accepting the general rule, is to make specific and explicit provisions for the allowance of attorney's fees under selected statutes granting or protecting various federal rights.

Alyeska Pipeline Service Co. v. Wilderness Society, 421 U.S. at 260. (Footnotes omitted). This Court has followed this policy against judicially sanctioned fee shifting in all of its recent decisions. *See, e.g., Hensley v. Eckerhart*, 461 U.S. 424 (1983) (Extent of plaintiff's success a crucial factor in determining proper amount of an award under 42 U.S.C. 1988); *N.C. Dept. of Transp. v. Crest St. Council*, 479 U.S. 6 (1986) (Counsel fees for administrative proceedings before litigation cannot be recovered under 42 U.S.C. 1988).

In 1987, this Court decided *Crawford Fitting Co. v. J. T. Gibbons, Inc.*, 482 U.S. 437 (1987). In this case, Chief Justice Rehnquist reviewed, in the context of a substantial award of expert witness fees by the district court, the impact of the 1853 Fee Act

with respect to cost-shifting in federal courts:

> In *Alyeska Pipeline Service Co. v. Wilderness*, 421 U.S. 240 (1975), we considered the general role of the Act in federal courts. The Act "specif[ied] in detail the nature and amount of taxable items of cost in federal courts." Id., at 252. The comprehensive scope of the Act and the particularity with which it was drafted demonstrated to us that Congress meant to impose rigid controls on cost-shifting in federal courts. Thus, we rejected an argument similar to the one posited by petitioners today: "Nor has [Congress] extended any roving authority to the Judiciary to allow counsel fees as costs or otherwise whenever the court might deem them warranted." Id., at 260.
>
> Although Congress responded to our decision in *Alyeska* by broadening the availability of attorney's fees in the federal courts, see the Civil Rights Attorney's Fees Awards Act of 1976, 90 Stat. 2641, 42 U.S.C. 1988, it has not otherwise "retracted, repealed, or modified the limitations on taxable fees contained in the 1853 statute and its successors." 421 U.S. at 260. Thus, we are once again asked to hold that a specific congressional enactment on the shifting of litigation costs is of no moment. We think that, as in *Alyeska*, Congress has made its intent plain in its detailed treatment of witness fees. We will not lightly infer that Congress has repealed Sections 1920 and 1821, either through Rule 54(d) or any other provision not referring explicitly to witness fees. As always, "[w]here there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one, regardless of the priority of enactment." *Radzanower v. Tou-*

> *che Ross & Co.*, 426 U.S. 148, 153 (1976), quoting *Morton v. Mancari*, 417 U.S. 535, 550-551 (emphasis added). Any argument that a federal court is empowered to exceed the limitations explicitly set out in Sections 1920 and 1821 without plain evidence of congressional intent to supersede those sections ignores our longstanding practice of construing statutes in pari materia. See, *United States v. United Continental Tuna Corp.*, 425 U.S. 164, 168-169 (1976); *Train v. Colorado Public Interest Research Group*, 426 U.S. 1, 24 (1976).

Crawford Fitting Co. v. J. T. Gibbons, 482 U.S. at 444-445. In *Crawford Fitting Co.*, this Court held that 28 U.S.C. Sections 1920 and 1821(b) define, "the full extent of a federal court's power to shift litigation costs absent express statutory authority to go further." *West Virginia University Hospitals v. Casey*, 111 S.Ct 1138, 1141 (1991).

The 1853 Fee Act, now codified as 28 U.S.C. 1920 and 1923, permit in federal courts, taxing as costs an attorney and proctor's docket fees of, "$20.00 on trial or final hearing . . . in civil . . . cases." 28 U.S.C. 1923(a). No express statutory authority exists to go further in this case. However, the United States Bankruptcy Court for the District of Alaska, the United States District Court for the District of Alaska, and the United States Court of Appeals for the Ninth Circuit all have held in this case that where state law "provides the rule of decision in a contested matter, the bankruptcy court will award fees to the same extent allowed under the governing law." *Holiday Mobile Home Resorts v. Wood*, 803 F.2d 977, 979 (9th Cir. 1986). (Citation omitted). The only analytical basis for this proposition is found in footnote 31 of the *Alyeska* opinion. Footnote 31 speaks to the diversity jurisdiction exception to the American Rule where, when a federal court applies state law, attorney's fees may be awarded according to the law of the forum state.

The slim analogy upon which the "rule of decision" proposition rests fails here where bankruptcy law is unquestionably fed-

eral and no specific Congressional legislation authorizes any award of attorney's fees in contested unsecured claims proceedings in bankruptcy court.

In 1985, Congress was required to fix the jurisdictional parameters of the bankruptcy court. In doing so, Congress specifically legislated that determination of claims was the essential business of the bankruptcy courts. 28 U.S.C. 157(b)(1) and 2(B) provide that the allowance or disallowance of a claim is a core proceeding which a bankruptcy judge may determine. Pursuant to 11 U.S.C. 502(b)(1), the bankruptcy court shall disallow the claim to the extent it is unenforceable under state law.

The national bankruptcy laws are the exclusive province of federal, not state law. Prior to the 1978 and 1985 Congressional adoption of a new completely comprehensive Bankruptcy Code, attorney's fees could be awarded in bankruptcy proceedings only where specifically authorized. *See, e.g., Cox v. Elliot*, 122 F.2d 851 (8th Cir. 1941). Thus, the American Rule has long application in bankruptcy proceedings where Congress, "[m]ade provision for the allowance of counsel fees in certain instances and by implication denies counsel fees in all other instances . . .." 2 S. Speiser, *Attorney's Fees*, Section 14.8, p. 18 (1973).

In the 1978 adoption and the 1985 amendments to the Bankruptcy Code, Congress specifically authorized attorney's fees in only four instances: 11 U.S.C. 330 (services for an estate); 11 U.S.C. 362(h) (violation of automatic stay); 11 U.S.C. 523(d) (excesses in consumer dischargeability actions), and 11 U.S.C. 303(i) (certain dismissals of involuntary petitions). The statutory history for these sections show a specific Congressional intent to allow the award of attorney's fees under the specified conditions. On the other hand, the contested claim of Jim Edenso was decided pursuant to 11 U.S.C. 502 regarding the allowance of a claim.

Section 502(b)(1) provides the bankruptcy court shall allow a contested claim except to the extent such a claim is unenforceable against the debtor under any agreement or applicable law. Collier's treatise states the reference to applicable state law is a defense which requires the claim to be determined in light of state law, 3 *Collier on Bankruptcy*, Paragraph 502.02[1], pp. 502-

28 (15th Ed.). The legislative history notes that the grounds specified in 11 U.S.C. 502(b) are "standards" the court will apply in hearing objections to claims. *House Report No. 95-595*, 95th Cong., 1st Sess. 352 (1977). No authority claims that 11 U.S.C. 502(b)(1) is a form of diversity jurisdiction where state rather than federal law governs. However, in a case decided before the adoption of the current Bankruptcy Code, this Court clearly rejected the doctrine that diversity jurisdiction governs bankruptcy claims determination:

> In determining what claims are allowable and how a debtor's assets shall be distributed, a bankruptcy court does not apply the law of the state where it sits. *Erie R.R. v. Thompkins*, 304 U.S. 64, has no such implication. That case decided that a federal district court acquiring jurisdiction because of diversity of citizenship should adjudicate controversies as if it were only another state court. See, *Holmberg v. Armbrecht*, 327 U.S. 392. But bankruptcy courts must administer and enforce the Bankruptcy Act as interpreted by this Court in accordance with authority granted by Congress to determine how and what claims should be allowed by equitable principles.

Vanston Bondholders Protective Committee v. Green, 329 U.S. 156, 162-163 (1946). (Footnote omitted).

Nothing in the legislative history of 11 U.S.C. 502(b)(1) remotely suggests that Congress intended bankruptcy courts to award substantial attorney's fees to debtors who successfully defended against claims based upon a state law defense. The wording of 11 U.S.C. Section 502(b)(1) certainly offers no such support. If attorney's fees can be awarded to the debtor, attorney's fees should be awardable to a successful creditor. To the contrary, 11 U.S.C. 502(b) clearly states the creditor's claim shall be determined "as of the date of the filing of the petition . . .." The fixing of such a date precludes awarding an unsecured creditor attorney's fees incurred after the date of the petition in disputed claims proceedings.

If Congress had intended that, in some but not all states, depending upon local laws, some debtors, but not creditors, shall be awarded substantial attorney fees after prevailing in an unsecured claim determination, Congress would have said so plainly. No such specific and explicit directive is found in 11 U.S.C. 502(b).

The incorporation of state law as a standard for decision found in 11 U.S.C. 502(b)(2) hardly invokes a form diversity jurisdiction known as the "rule of decision" which mandates the award of attorney's fees pursuant to state law without the explicit and specific Congressional authority for such an award. Such a holding is plainly contrary to 28 U.S.C. 1920 and 1923(a) and the decisions of this Court in *Alyeska Pipeline* and subsequent cases.

II. The United States Court of Appeals for the Ninth Circuit has decided an important question of federal law which has not been, but should be, settled by this Court.

The Court of Appeals for the Ninth Circuit has decided an important issue of federal bankruptcy law holding that whenever state law provides the "rule of decision," state law, not federal law governs any award of attorney's fees. Neither this Court nor any other circuit court of appeals has reached such a result. This Court's policy of enforcing the American Rule as enacted by Congress and the need for uniformity in the application of federal bankruptcy laws dictate that this petition for certiorari should be granted in order to review the decision of the United States Court of Appeals for the Ninth Circuit in this matter.

CONCLUSION

For the foregoing reasons, a writ of certiorari should issue to review the memorandum decision of the United States Court of Appeals for the Ninth Circuit in this case.

Respectfully submitted,

LAW OFFICES OF CHARLES G. EVANS

By: Charles G Evans

Charles G. Evans 10-28-93

NO. _____

IN THE

Supreme Court of the United States

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Petitioner

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APPENDIX TO
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ATTORNEYS FOR PETITIONER,
JIM EDENSO

UNITED STATES DISTRICT COURT

DISTRICT OF ALASKA

IN RE:	)	Case No. 5X-85-0007-
	)	
HAIDA CORPORATION,	)	Anchorage, Alaska
	)	Wednesday, March 18,
Debtor, Ch. 11.	)	1992, 2:04 o'clock pm
	)	
	)	HEARING ON OPPOSITION
	)	TO AWARD OF COSTS AND
	)	ATTORNEY'S FEES

TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE HERBERT A. ROSS
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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ANCHORAGE, ALASKA-WEDNESDAY, March 18, 1992

(On record at 2:04 o'clock p.m.)

THE COURT: Stand by one second. This is the Haida Corporation case, 5X-85-00007. It's a motion on costs and attorney fees filed by Haida Corporation against Jim Edenso with respect to the hearing we had on the objection to Proof of Claim No. 15, Mr. Edenso's proof of claim.

Attending telephonically from Seattle is Mr. Edenso. Here in court is Mr. Edenso's attorney, Charles Evans, and Cabot Christianson, attorney for Haida Corporation.

I've reviewed the — stand by one second. I've reviewed the opening brief of Haida, the response of Mr. Edenso, and then the reply by Haida, and researched the law again and looked it over. I think that there's authority in the Ninth Circuit that in a claims objection situation where it's litigated and the issue was a determination under state law, which was the issue in this — the fact in this case, that the Court should follow the state law and award attorney fees if that would be the result in state court, or under state law.

The case — both parties cited the Holiday Mobile Resort case and the Sparkman case. One other case was In Re: Eastview Estates II — Roman Numeral II — 713 Fed.2d 443 at 451 (Ninth Circuit, 1983). In that case, I was looking for a case that specifically dealt with claims objections under Bankruptcy Rule 307 and whether or not that would be an issue that could give rise to attorney fees. And I think the — I just had a chance to skim it, and it's a long case, but I think the result in that case, which happened to

deal with brokers and objections to claims, was that under California law, apparently, there's written into each brokerage contract something like an attorney fee clause, and the court said it was appropriate to award attorney fees when the dispute was about the validity of the contract.

I don't know, one of the parties might have cited that case or not. So in any event, my ruling on whether or not it's appropriate to award attorney fees is that it is appropriate. I could see a case where it wouldn't be appropriate; in other words, if the issue was whether somebody missed a claims bar date and it was a question of federal law, that would be case where the American rule would prevail. And I guess you'd find a lot of cases where it might be difficult to determine which view to take or whether to allow attorney fees on the whole claim. In this case, the whole matter did appear to be a state court issue, since it was a 100-percent payment plan. So it's appropriate to award an attorney's fee to a prevailing party under Alaska law.

And I've also reviewed the matter regarding the objection to costs, and I've never really found the answer to this question, whether if somebody misses the procedure that's set out in the local bankruptcy rules and in Rule 7054, which is the adversary rule that's incorporated into contested proceedings by Rule 9014, whether that is critical or whether the moving party loses their claim by default and untimeliness. I hadn't really looked at the statutes or Ninth Circuit cases on costs very much in the course of my being a judge for six years. Mostly the matters have been referred to the Clerk.

I think's it's probably something where the Court has the discretion to waive untimeliness and the procedure. I think the best procedure is to go through the Clerk. On the other hand, there's an awful lot of cases that are contested and litigated, for example, confirmation hearings, where the Clerk doesn't hear the cost bill, and you might technically feel that it should be within the purview of Rule 054.

The other thing I found out is, in looking at 7054, it incorporates most of Rule — Civil Rule 54, Federal Civil Rule 54, except for the cost part and specifically uses its own cost analysis, which

is very similar, except it's written in a little more discretionary language. So apparently, according to Collier's, the bankruptcy judge has more discretion on whether or not to award costs.

The other thing I looked at is the parties here — or Mr. Christianson indicated that in Alaska bankruptcy —Alaska Civil Rule 79 would be used to determine costs. I think probably with respect to all the costs except attorney fees, the federal rules would prevail. There's a Rule 21 in the U.S. District Court, for example, regarding costs. And I thought of it because the parties were contesting whether or not the costs of some of the depositions, or copies of depositions, should be allowed or not. And it's my belief that the U.S. District Court Rule 21, I think, limits it to the initial or the original deposition that was filed with the court. I'm not sure how much of Mr. Christianson's costs that were included on his original application were for copies or not. It doesn't — it's not going to amount to a lot of money either way.

And other than that, reading through this, I agree with some of the things that Mr. Evans said about, for example, the cost of the abstention motion and the motion for distribution. It's hard to say that Mr. Edenso should be tagged for that. And I looked over all the individual items that were objected to, some very minor, like a conference with an office associate and some which were more extensive, including like charging for the time to travel, et cetera.

And I frankly think that, you know, I didn't pay any attention to whether or not there's any racial motive on this or not. And I didn't even really get that from Mr. Evans' brief that much. I think there was — in my remembrance of the trial, there's more of a political problem here than a racial problem. It was one faction that was in control of Haida objecting to the management that he was stuck with at that time. And unfortunately for Mr. Edenso, he was dealing with that management, the — and that's really what gave rise to the animosity.

And I sort of went over the trial in my mind, and I came to the conclusion that it would probably be appropriate to award attorney fees in the neighborhood of 50 percent of an appropriate figure to allow Haida to recover, in part, under the cases that are

cited by Mr. Christianson as indicative of Alaska law, something in the neighborhood of 50 percent. That's at the low end of the scale that you cited. You said cases have gone from 50 to 80 percent.

And really, the basis for doing that, or thinking that, before hearing argument of the parties, is that I think there was, you know, like a fatal flaw in the case that Mr. Edenso had. On the other hand, I didn't find that Haida had completed clean hands in this too. I recall the testimony regarding the attorney from Seattle and the meetings, the various meetings that took place. And I have a felling that they were — sort of led Mr. Edenso on a bit also in this when they could have addressed it head on and resolved it so that maybe the trial might have been avoided.

On the other hand, Mr. Edenso, under the case law in Alaska, did have to produce a deal that could close, or would close. The reason I didn't grant a directed verdict was that I still wasn't sure, and I felt that Mr. Edenso may have made a case that Haida was doing this somewhat to avoid the brokerage fee or to try to resolve this alone without having to pay a brokerage fee. It was a close call, but I denied the motion for a directed verdict hoping to hear some testimony that would be more dispositive one way or the other.

And as Mr. Christianson said, it became crystal clear that the dispositive thing was going to be whether or not CFAB would have allowed such a loan to close over — would have subordinated their interest to allow such a loan to close. And when CFAB said hell, no, they're not going to do this, 'Hell no, we probably wouldn't have done that,' then the case was essentially over at that point as far as I could see under Alaska law. So in hindsight, it was easy to see; it might not have been so easy to see going in.

And, Mr. Christianson, did you want to argue?

MR. CHRISTIANSON: Well, I think the Court has — I understand where the Court is coming from on the issues there. I guess the one point I want to make is that the initial motion to distribute the money had really two components. One was to seek an order — well, the plan of confirmation said that Haida Corporation had to hold the money and — hold the money for dispute of claims, it was two years after the plan was confirmed, and we still

hadn't gotten any input from Mr. Edenso, and Haida filed a motion, really, to get Mr. Edenso off the dime. And we did that, the vehicle we used to do that was to ask that we be permitted to release the money, and then if Mr. Edenso wanted to pursue the claim, he could do so in state court.

THE COURT: How much was the figure that was attributed to that? It was several thousand. Was it four or five thousand dollars?

MR. CHRISTIANSON: I think the —

THE COURT: Mr. Evans gave a figure, and I can't remember which one it was.

MR. CHRISTIANSON: I think —

MR. EVANS: I think it —

MR. CHRISTIANSON: — Mr. Edens- — Mr. Evans —

MR. EVANS: — was closer to eight or nine, Your Honor.

MR. CHRISTIANSON: It was $5,148 allocated, if I'm — I believe, allocated to that claim — allocated to that item.

THE COURT: Well, when I read that part of the brief that we were trying to get Mr. Edenso to get off the dime, I thought, really, the way to have done it would have been to set this for a hearing instead of that kind of a motion. If you understand what I'm saying.

MR. CHRISTIANSON: I do. I do. And it's history now. The client's view, at the time, was that they would feel more comfortable with a jury in Southeast, and that was their reason for the abstention. But, I mean, that's — the point is that they — whether it had been — even if we had — if we had done it the other way, forgetting about the abstention approach and simply filed the objection to the claim, there would have been a substantial amount of energy put in a motion — in a memorandum objecting to the claim. So I think the —

THE COURT: Well, I agree that it was — really went into detail on the merits, so it wasn't — it didn't — I didn't mean to imply it was —

MR. CHRISTIANSON: Okay.

THE COURT: — unproductive in total.

MR. CHRISTIANSON: Yeah.

THE COURT: I just thought that —

MR. CHRISTIANSON: And I understand that the Court, you know, when you give a percentage, and particularly under Rule 82 where you typically don't get a full percentage, that there's some discretion involved, and I guess if that's where the Court — I think the — if that's where the Court's going, we accept that. We — you know, we — it is important to Haida that the Court understand that we were litigating in good faith and we weren't — we're not stonewalling.

THE COURT: Well, I always thought that the parties,, you know, were — this wasn't a bad faith litigation. I just think it was a case where the — you know, they weren't able to just negotiate a settlement. And I didn't realize that you were $50,000 —apparently $50,000 part, even the very end.

MR. CHRISTIANSON: I have nothing to add.

THE COURT: Regarding the costs, I was going to adopt Mr. Edenso' argument about the copying costs which, although I realize that in the course of approving fee applications, very often approve 25 cents a copy, and I know the Court charges to have a clerk make a copy 50 cents a copy, but for in-house copying, I think we try to incorporate this into the new rules. Especially on big runs, the actual cost of doing it is not 25 cents a copy. So I was going to allow 10 cents a copy on that. And it's not a big issue, but it will cut a bill of $1,000 down to about 40 percent of that.

And regarding the deposition costs, if — let me go over the — let me just talk about the cost part of this first.

MR. EVANS: Yes, Your Honor, I do certainly want to address the —

THE COURT: Okay.

MR. EVANS: — attorney fee issue.

THE COURT: On the cost part, I would propose to reduce the $10 — $1,014 by 40 percent — to 40 percent of that.

Regarding the item on $589, the round-trip fare to Anchorage, the objection there was they didn't really have enough detail to know whether this was appropriate or not. Could you — did you answer that in your response?

MR. CHRISTIANSON: Yes, I did answer it in the response,

Your Honor. In fact, I couldn't find the time bill, so I — the cost slip, so I set a figure of $250, which I absolutely know to a moral certainty is less than the actual cost.

THE COURT: That was on the $589 round-trip ticket, for the air fare?

MR. CHRISTIANSON: I think it was $633.

THE COURT: Okay. Okay. Another thing I think that was objected to was the number of transcripts. I think it's on the very last page. Is — did — I can't recall the response. I know that you did.

MR. CHRISTIANSON: I felt that the state law applied on the cost, Your Honor. I really didn't brief that in any detail, but the thought process was that it's the same —

THE COURT: Okay.

MR. CHRISTIANSON: — such a right. If it's a — if there's a federal rule that applies that permits recovery for the Court's costs but not the counsel's costs, then that would cut it in half, I suppose.

THE COURT: See what it says here. It says deposition costs. This is in Rule 21(b)(3):

> "The reporter's charge for the original filed deposition is taxable. On a tax deposition, the reasonable expenses of the deposition reporter or notary, including travel, fees for the witnesses at the — for the attendance. Counsel's copies are not taxable regardless of which party took the deposition. Counsel's fees and expenses in arranging for the taking of the deposition are not taxable, except as provided by statute or by the Rules of Civil Procedure."

So I think really what we're talking about here, these were depositions that were taken in Juneau of Percy Frisby and — or Mr. Edenso?

MR. CHRISTIANSON: Yes.

THE COURT: Okay. So there probably wasn't any travel time or anything like that for the reporter. It was just a Juneau court reporter?

MR. CHRISTIANSON: That's correct.

THE COURT: And I don't know if you know how much of

this $479.80 is for the original cost or not.

MR. CHRISTIANSON: No, I don't know if the first — I think the first cost — first copy is more than the second copy, so I don't know if your copy is the first one and mine's the second. That's what I say, if it's —

THE COURT: Can we just agree that it was something like in the neighborhood of three to four hundred dollars or —

MR. EVANS: Your Honor, I can't agree to that because, you know, this goes back to the purpose of the Alaska Rule — Civil Rule 79 on costs and also the comparable federal rules on costs that require a cost bill hearing. In all the cases in state court that I go to, there is a cost bill hearing, there are itemized submissions, and you go in front of the Clerk, and the Clerk, if you don't have it, if you give the answer that Mr. Christianson has given today, the Clerk simply disallows it because the burden is on the party asking for the cost to identify those. So I think that should be deleted —

THE COURT: I —

MR. EVANS: — in its entirety.

THE COURT: I looked at the — I looked for a case that said that, you know, if you don't go to the Clerk, sir, you're out of court, and I couldn't find one that said that, couldn't find one that talked about it at all.

MR. EVANS: Well —

THE COURT: I did — I looked at it about 10 or 15 minutes; I didn't look that hard.

MR. EVANS: I can provide that cite to the Court, at least under Alaska law, that if you don't file and notice up, the rule itself states that you waive them.

THE COURT: Okay.

MR. EVANS: And there's one of the —in fact, one of the cases I cited on attorney fees, my recollection is, one of those cases also addresses that specific —the specific issue that you don't get your cost bill —

THE COURT: Rule 82 says the same thing about a presumed waiver of attorney fees, if you don't file in 10 days.

MR. EVANS: Well, it's not a presumed waiver, it's just a flat-out straight waiver. If you don't get it in front of the Clerk,

then when I go down to a judge in superior court, he says no recovery.

THE COURT: Well, I probably could have done that. In this Rule 7054(b), it says,

"Costs may be taxed by the Clerk on one day's notice."

And because they have the word "may" in there and because I couldn't find any case law one way or the other, I figured that this was a procedure that was set up, but it wasn't something that was so necessary to the whole process that the Court couldn't relax it.

In this particular case, I'm aware that the trial took place in Ketchikan and Anchorage and the parties traveled to Juneau to look at records and take depositions of the critical witnesses. So, you know, I'm sure that some of these deposition costs are valid. Because Mr. Christianson probably doesn't have his billing here today, I was just asking for something that was reasonable because of the amount of time involved to really pinpoint this exactly.

I think what I'll do is just allow, since I know and have seen copies of Edenso's deposition and Frisby's deposition, that they were, you know, not insubstantial. They probably took at least an hour or more apiece. That I'll allow the approximate cost of — is probably $300 for the initial one that was filed with the court. So I'll allow $300 on the October 3rd, 1991 item.

So regarding the cost part of this, I'm going to give 40 percent of $1,014, $250 for the May '89 trip. And were there any objections to the other parts of this, Mr. —

MR. EVANS: I'll have to look back, Your Honor.

THE COURT: Okay.

MR. CHRISTIANSON: I think those were the only objections, Your Honor.

(Pause)

MR. EVANS: On the bank card services, I — that's simply a flat $450, apparently for travel expenses, on May 23, '91. Is the Court saying that the travel expenses for —that is being allowed is the $250 total?

THE COURT: That was for the May '89 trip. And is there — was there an objection on this one? What was the response?

MR. CHRISTIANSON: The only objection I'm aware of is

the May '89 one of $633.

THE COURT: Okay. What was the $450 for? That was for hotel room and two days in Juneau or one day in Juneau?

MR. CHRISTIANSON: Yeah, I have to find it.

MR. EVANS: But, you know, again, $450 for one night in Juneau, 'cause we went down to do the depositions, the depositions started in the afternoon. We stayed — you know, I'm sure that we — Mr. Christianson probably had to stay overnight to get out of Juneau. But $450 for a night in Juneau, although it might be expensive, is —

THE COURT: There's two —

MR. EVANS: — certainly —

THE COURT: — figures there.

MR. EVANS: — that's certainly not appropriate.

MR. CHRISTIANSON: No, no, no. The —

THE COURT: There's $450 —

MR. CHRISTIANSON: Yeah.

THE COURT: — and twenty — I think —was this one of the ones where there's a double-count by mistake.

MR. CHRISTIANSON: No, no, no. The bank card services it the plane fair down and back to —

THE COURT: To Juneau?

MR. CHRISTIANSON: — to Juneau. The — I spent two nights in Juneau. The depositions actually took about —

THE COURT: So the $450 —

MR. CHRISTIANSON: — somewh- —

THE COURT: — was just for air fare?

MR. CHRISTIANSON: Yeah.

THE COURT: And the two-fifty- —

MR. CHRISTIANSON: The $255 was —

THE COURT: — -five, eighty-four is for your room and meals?

MR. CHRISTIANSON: That's right. So that's — and I charged by credit — my plane ticket on a credit card and —

THE COURT: That sounds about what it costs to get to Juneau and back, Mr. Evans. So unless there's some objection to that, I'll allow the cost of the plane fare, $450, and the 25 —

$255.84, and likewise, the trip to Ketchikan that took place in January of 1992.

Okay. Regarding the objections to fees, did you want to talk about any of the objections or — Mr. Evans?

(No audible response)

THE COURT: Just sort of reviewing my notes, there was 5 hours for travel time, 1 1/2 hours for time spent in the offices of the Alaska Federal Credit Union, .7 hours for a conference with an associate, 30 hours for preparation of the motion to disburse funds, plus another 12.3 hours, apparently, for that purpose, some double entry of 1.4 hours, 2.1 hours for travel time in August of '91.

The objection to some portion of the 12 hours preparing for the Frisby and Edenso deposition, objection to checking into the registration — or the Registrar at Stanford, some discussion because of a inadequate description of a David R., who turned out to be the guy from CFAB. All in all, there was, according to Mr. Edenso, a reduction that should have taken place of $8,161 and the fees of 19 — $13,528.50 were more appropriate on — if an hourly basis was to be used.

And I'm just sort of talking to myself here to see if I have it all in mind. Did anybody want to argue about these fees? I tell you, my general though it that there probably is some of the objections that are legitimate. To try to get too find a point on it, when you're estimating a percentage anyway to reduce, I think, is not trying to figure out how many angels can dance on the head of a pin. My —

MR. EVANS: Well, Your Honor, obviously, I think the number that — the upper limit number that we need to start discussing is that $13,528.50 rather than the $19,375.55 for which Haida Corporation moved.

THE COURT: I — my thought is this: that if we're talking about that figure, I was going to award them. I'm not going to award them only 50 percent, I'm going to award them something that's more substantial. And I thought some of the objections were legitimate. And some are hard to come to a fine point one. For example, preparation of that motion for abstention was not at

all wholly ineffective. It was useful for preparation for trial, and in fact, that was the largest part of the preparation, I would guess. They were either going to trial or getting it into state court. The best I can come up with is taking a figure of in the neighborhood of $18,000 and reducing it in half and awarding Haida a figure of $9,000 for its —

MR. EVANS: Your Honor, I'd like to address the appropriateness of that 50-percent number that you've fixed on —

THE COURT: Okay.

MR. EVANS: — because I'm concerned about that.

THE COURT: Yes.

MR. EVANS: And one of the things that is easy to overlook is that Civil Rule 82, which really is the only authority that the Court has in this matter to award attorney's fees, and certain, Mr. Edenso doesn't give up his argument the Court doesn't have authority even in that case. But Civil Rule 82 from Malvo v. Penney, and the leading case in Alaska clearly makes the point that the award of attorney fees should only be partial and that it is discretionary with the Court.

And there's a schedule in Civil Rule 82 that generally provides the amount of attorney fees that are allowed under Civil Rule 82. In contested matters, when you have — for example, if there had been a recovery of $13,000, or $19,000, there is a specific percentage that is applied. And that percentage, even in contested cases, is never more than 20 percent of the total attorney fees incurred. And that is the initial standard that the courts in Alaska apply, is in that neighborhood of 20 percent.

Now, when you don't have a monetary recovery which can be plugged into the Civil Rule 82 schedule, then it's discretionary with the Court what is awarded. But in state court, rarely if ever does the court, in non-monetary recovery cases, award more than 15 to 20 percent or attorney fees. And that's just the — it's a practice, and that's when happens in state court, and that's what would happen in this case.

THE COURT: What recovery are you talking about then?

MR. EVANS: Well, what I'm saying is, unless —

THE COURT: You're saying if I —

MR. EVANS: — unless the Court finds extraordinary circumstances, bad faith litigation, other factors that weigh heavily against going past that percenta- — type of percentage recovery —

THE COURT: Fifteen percent of what, though? The attorney fees themselves?

MR. EVANS: No, it would be 15 percent of the justifiable type of attorney fees. So if you get a number of — they had a claim of $19,000. I think that we've discussed that, you know, maybe not all that should be reduced, but a significant —

THE COURT: I could probably tell you that I don't I didn't interpret this as a rule — we're talking about a claim that was $168,753.53, according to the trial brief filed by Mr. Edenso, and he was asking for attorney fees of $168,753 of $19,375.35. And, you know, it'd probably be a better analogy to say that if there was a figure to be picked that was an appropriate figure to use as a measuring stick for appropriate attorney fees, you have the — you know, if you would have prevailed, would have gotten close to nineteen or twenty thousand dollars under Rule 82.

You know, presumably, the — both parties put in about equal amount of time. If I'd have cut those fees — or maybe that would have been the entire fee — that would have been the —

MR. EVANS: Well, the —

THE COURT: — law, though, under Rule 82.

MR. EVANS: Well, the Court has discretion to do that in appropriate cases. But my point is, is that if Haida Corporation spent $19,000 — spend and applied for $19,000 in attorney fees, then the appropriate measure, unless there — you know, after deducting what was — for example, you know, the $5,000 that certainly wasn't all entirely justifiable in connection with the motion to have the Court abstain, that's the number that you apply the 15- to 20-percent yardstick to. And —

THE COURT: I think it would be more appropriate to take the actual attorney fees in this case and reduce them somewhat. In your particular case, I would imagine your fees are in the neighborhood of ten to twenty thousand dollars. In any event, you spent four days in trial and a couple of days in depositions and a lot of

travel. I'm not going to ask you to state on the record what your fees were, but they had to be up there in the five figures, I would imagine.

MR. EVANS: I can assure the Court that what Mr. Edenso has paid to me is less than a $10,000 number.

THE COURT: Well —

MR. CHRISTIANSON: (Laugh, indiscernible comment.)

THE COURT: — if that —

MR. EVANS: And then that's all he's —

THE COURT: Is it — you know, I don't know. The real question —

MR. EVANS: Well, I mean, but —

THE COURT: — is what you billed him.

MR. EVANS: — really, that's beside the point. I mean, the proper measure of how to judge what Haida Corporation is entitled to, assuming that you accept the Court's reasoning that —

THE COURT: I'm not asking you to —

MR. EVANS: — there's authority to do it —

THE COURT: — put that on the record, when you billed him or didn't bill him. I'm just saying from experience, I know that when people get involved in contested litigation that takes three or four days and that they're prepared, as both counsel have done and prepared an excellent group of exhibits, that you're beginning to talk about big money, and that's what settles cases. And so I know that your fees are probably substantial also.

But I wouldn't use the theory that you're talking about, is to take what the actual attorney fees and then apply Rule 82 to the attorney fee award.

MR. EVANS: Well, that's generally what is done in state court all the time. And unless there's — you know, what the Supreme Court of Alaska requires is, is that there be detailed findings and explanations for deviating from that kind of a recour- —recovery. Because the underlying purpose of the rule is not to compensate significantly or substantially the prevailing party; it's only to compensate the party partially. And if the Court awards 50 percent, then you're certainly into the substantial rule. And unless Mr. Edenso has brought this claim in bad faith or some other sig-

nificant reason that justifies penalizing him, then the award should be along the lines of what generally happens in state court, which is the 15- to 20-percent rule.

THE COURT: I used also your request for attorney fees in your opening trial brief as a sort of measuring stick whether this was reasonable or not.

MR. EVANS: Well, Your Honor, frankly, let me address that because Mr. Christianson has repeatedly referred to that. My problem throughout this whole litigation has been trying — has been to attempt to get Haida Corporation to consider this a serious claim. And, you know, if I put a number in there to get the number up so that they at least could recognize that they had significant potential exposure so that I could bring them to the bargaining table is not a concession on — certainly on my part that that's an appropriate measure of attorney fees.

And moreover, you know, in — the evidence, or the — I won't call it evidence 'cause it's not evidence. The statements that Mr. Christianson put in his brief about the settlement are simply not how I —

THE COURT: Well —

MR. EVANS: — saw this matter happen.

THE COURT: I —

MR. EVANS: I never saw the $15,000 offer. And moreover, any consideration of that would be improper in this motion pursuant to Federal rule — Evidence Rule 48, which has the salutary purpose of trying to get the parties to talk during negotiations, and if there — and not using those negotiations against them subsequently.

THE COURT: I didn't use the settlement for anything other than to show that the parties really made some effort to resolve this, although it turns out they were so far apart that it was insolvable. I also, you know, know that going in, there was $103,000 claim and that there was a number of tens of thousands of dollars of interest, 40 or 50, that was added to it by virtue of time.

So everybody knew approximately what we were talking about. Both parties could have moved this forward for a hearing

just by saying we want to get this done. At the confirmation hearing, you left it to the parties to figure out a trial schedule. When it was demanded by one party, the other let it go to a hearing, and it did go to a hearing. And so you can't —

MR. EVANS: So what were —

THE COURT: — you can't fault them, and they can't fault you for the delay —

MR. EVANS: Well, so what —

THE COURT: — you're both at fault.

MR. EVANS: — we get back to is a real — the real substance of this claim was a $104,000. And, you know, absent the intervention of the bankruptcy, which, certainly, Mr. Edenso didn't have anything to do with how long it took Haida Corporation to obtain the money from, you know, the transfer of Goat Island and so forth. You know, absent that, we're talking about a $100,000 claim, and in — you know, and in state court, you're talking about a potential maximum exposure in the neighborhood of, you know, ten grand or so. And —

THE COURT: Well, I think probably if you'd have won, you'd have not — you'd have been arguing just the other way for every day of interest.

I'm going to say that I doubt whether the analysis that you used of state court decisions should be applied here. My memory of the state law is that they're talking in the neighborhood of not the 100-percent unless there's some bad faith motive or bad acting involved, but something between 50 and 80 percent. I certainly haven't made a statistical analysis, but I'm virtually sure they're not talking about 20-percent attorney fees in the ordinary case. They're just saying not full recovery, and they pick out a figure.

And again, for making explicit findings, I think it reaches a point of diminishing returns, although if you appeal, I'll probably have to do it. I'm just saying that some of the points you made are valid. For example, some of the motions have a portion of them that you shouldn't be tagged for because it could have been just as well spent going right to the hearing, the motion for abstention. But a large part was valid because it went to the merits.

Mr. Christianson has made some reductions. I'm just

picking a figure which is right in the ball park of $18,000. He might think it's a little low because it does take maybe more off than is — he thinks is appropriate, and then reducing that to 50 percent. If I were looking at this knowing it was a four-day trial and said — you said that $13,000 is the appropriate figure, then I would rethink the 50-percent and say that four days of trial, several days of depositions, a lot of travel, a lot of the conferences with third parties until we reached the final resolution is more than a two or three or four thousand dollar attorney fee endeavor.

And so I'm going to award attorney fees in the amount of $9,000 to Haida, and I'm going to award the costs that I've discussed.

If you have those in mind, do you want to just prepare an order, or would you rather have me do it?

MR. CHRISTIANSON: I can do that, Your Honor.

THE COURT: Okay. And — go ahead.

MR. CHRISTIANSON: I do have one procedural issue. I lodged an order, I think — I don't have my calculator here, so I don't know what the cost figure is. I did lodge an order, which was an order and not a judgment, and it occur to me that this is not the sort of instrument that is going to be —

THE COURT: This order is a one-page?

MR. CHRISTIANSON: Yes. I think that looks like it, yes.

THE COURT: If you think you can do it on this by interlineation and wanted to do it that way —

MR. CHRISTIANSON: Okay. Well, the point is that I think I need to have something that has the word "Judgment" up at the top. So what I'll do is I'll lodge a judgment.

THE COURT: Okay. I'll just mark "Not Used" on this and ask that you lodge an order and — after serving it on Mr. Evans — the $9,000 attorney fees, 40 percent of $1,014, $250 instead of the $633, $300 for the depositions, plus the rest of the costs that you've indicated.

MR. CHRISTIANSON: I understand.

THE COURT: Okay. Thank you. You can go off record.

(Whereupon, the proceedings in the above-entitled matter were adjourned at 2:48 o'clock p.m.)

CERTIFICATE

I hereby certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/ Cindy S. Carl, CCR
5/5/92

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UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF ALASKA

In the Matter of:	)	Case No. 5X-85-00007
	)	
HAIDA CORPORATION,	)	
	)	
Debtor.	)	
	)	

FINAL JUDGMENT AGAINST JIM EDENSO

A hearing was held March 18, 1992 on Haida Corporation's motion for attorney fees and costs as prevailing party against Jim Edenso with respect to Proof of Claim No. 15. Accordingly,

Final judgment is entered against Jim Edenso in favor of Haida Corporation in the amount $9,000 fees plus $2,669.24 in costs, for a total of $11,669.24. This judgment shall bear interest from March 18, 1992 at the rate set by 28 USC Section 1961.

Let execution issue.

Dated March 25, 1992

/s/ Herbert A. Ross
Herbert A. Ross
U.S. Bankruptcy Court Judge

MINUTES OF THE UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

In re Haida Corporation
Case No. A-92-342 Civ.

By: THE HONORABLE JAMES K. SINGLETON

Deputy Clerk: Marvel Hansbraugh,
Case Management: 271-5575*

PROCEEDINGS: ORDER FROM CHAMBERS

This is an appeal from a decision in the Bankruptcy Court. Only airfare and other costs in the amount of $2,196.84 and attorney's fees in the amount of $9,000 are at issue.

IT IS THEREFORE ORDERED:

The judgment of the Bankruptcy Court is **AFFIRMED**.

Entered at the direction of the Honorable James K. Singleton, United States District Court Judge, by Ms. A. Susan Buenafe-Bamba, secretary to Judge Singleton.

DATE: December 21, 1992
SECRETARY'S INITIALS: asb/ab

*** ALL INQUIRIES REGARDING THE SCHEDULING OR CALENDARING OF THIS CASE SHOULD BE DIRECTED TO THE ABOVE-INDICATED CASE MANAGER.**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: HAIDA CORPORATION,	)	No. 93-35104
	)	
Debtor.	)	D.C. NO. CV-92-00342-JKS
	)	
JIM EDENSO, Appellant,	)	**MEMORANDUM***
	)	
v.	)	
	)	
HAIDA CORPORATION,	)	
	)	
Appellee.	)	
	)	

Appeal from the United States District Court
for the District of Alaska
James K Singleton, District Judge, Presiding

Submitted July 21, 1993**

BEFORE: BROWNING, TANG, and NORRIS, Circuit Judges

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Circuit Rule 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a); Circuit Rule 34-4.

Bankruptcy creditor Jim Edenso appeals the district court's decision affirming the bankruptcy court's award of attorney's fees and costs to debtor Haida Corporation. Following Haida's filing for bankruptcy in early 1985, Edenso filed a claim for a fee for a loan he allegedly helped secure for Haida, along with the costs incurred in securing such loan. The bankruptcy court disallowed the claim and awarded Haida approximately fifty percent of their attorneys' fees and costs. We affirm in part, reverse in part, and remand.

I

Edenso claims that the bankruptcy court erred by awarding attorneys' fees to Haida because the American Rule against fee-shifting should apply to this action. However, we have held that "state law governs an award of attorney fees if state law and not federal bankruptcy law provides the rule of decision in a contested matter." In re Bybee, 945 F.2d 309, 315 (9th Cir. 1991) (quotation omitted). Because the bankruptcy court disallowed Edenso's claim by applying Alaska state law, Alaska state law also governs the award of attorneys' fees. Under Alaska law, the prevailing party in a civil action may be awarded attorneys' fees. Alaska Stat. 09.60.010 (1992); Alaska R. Civ. P. 82(a). Therefore, the bankruptcy court did not err by awarding Haida a percentage of its fees.

II

Edenso also challenges the bankruptcy court's award of $1,813.84 in attorney travel expenses to Haida. We agree with Edenso that these expenses may not be recovered as "costs" because they are not mentioned in 28 U.S.C. 1920, which governs the taxation of costs in federal courts. See West Virginia Univ. Hospitals, Inc. v. Casey, 111 S. Ct. 1138, 1141 (1991) (28 U.S.C. 1920 defines "the full extent of a federal court's power to shift litigation costs absent express statutory authority to go further") (citing Crawford Fitting Co. v. J.T. Gibbons, Inc., 482 U.S. 437 (1987); Wyandotte Sav. Bank v. N.L.R.B., 682 F.2d 119, 120 (6th Cir. 1982) (counsel travel costs not recoverable as costs because not mentioned in 28 U.S.C. 1920); Commissioners of Highways v. United States, 653 F.2d 292 (7th Cir. 1981) (same). Because Congress has

not specifically authorized bankruptcy courts to "go further" than section 1920's list of costs, the bankruptcy court erred in awarding Haida their attorney travel expenses.[1] We remand to the district court for a redetermination of the amount of costs properly awardable to Haida.

AFFIRMED in part, REVERSED in part, and REMANDED.

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[1] Contrary to Haida's assertion, Bankruptcy Rule 7054 does not permit the award of attorney travel costs here. Rule 7054 permits the award of "costs to the prevailing party except when a statute of the United States...otherwise provides." Bankruptcy rule 7054 (1987). Here, 28 U.S.C. 1920 is such a statute.

August 2, 1983

Mr. Percy Frisby, President
Haida Corporation
P.O. Box 89
Hydaburg, Alaska 99922

Dear Percy:

This letter is to provide the terms of the agreement between the Haida Corporation and Jim Edenso whereby the Haida Corporation agrees to hire Jim Edenso to provide the Haida Corporation with assistance in obtaining the financing for the construction of a logging camp to be located at Hydaburg, Alaska. This agreement shall last until the financing is complete or until such a time that both parties agree in writing that the agreement shall be terminated.

It is further agreed that the agreement shall not last for longer than a nine (9) month period beginning August 1, 1983 and ending April 30, 1984. The term of the agreement may be extended by the written agreement of both parties.

Jim Edenso shall be paid a fee of 4% of the total amount financed plus any expenses incurred in obtaining the financing. Expenses shall include air transportation, travel expenses for taxi cabs, automobile rental, ferries, hotel lodging, meals, telephone expenses, and other related costs. Haida Corporation shall pay Jim Edenso an advance of $4,361.00 to cover costs already incurred ($1,361.00 for travel and lodging plus $3,000.00 advance fee to initiate the process).

Under this agreement Jim Edenso will provide the business plan and pro-forma financial statements for the logging camp, plus identify and work with the financial institutions in order to obtain the financing for the logging camp and related facilities. Jim

Edenso will do all work needed to complete the loan applications and will work directly with the Haida Corporation management in order to ensure that every effort is made to provide financing within a reasonable time. Haida Corporation will provide financial statements and other documentation needed in the loan application process. The terms of this agreement may be amended upon the written consent of both parties.

Percy Frisby

/s/ Percy Frisby
President, Haida Corporation

Jim Edenso

/s/ Jim Edenso
Consultant

11 U.S.C. Section 303(i).

(i) If the court dismisses a petition under this section other than on consent of all petitioners and the debtor, and if the debtor does not waive the right to judgment under this subsection, the court may grant judgment—

(1) against the petitioners and in favor of the debtor for—

(A) costs; or

(B) a reasonable attorney's fee; or

(2) against any petitioner that filed the petition in bad faith, for—

(A) any damages proximately caused by such filing, or

(B) punitive damages.

11 U.S.C. Section 330. Compensation of officers.

(a) After notice to any parties in interest and to the United States trustee and a hearing, and subject to sections 326, 328, and 329 of this title, the court may award to a trustee, to an examiner, to a professional person employed under section 327 or 1103 of this title, or to the debtor's attorney—

(1) reasonable compensation for actual, necessary services rendered by such trustee, examiner, professional person, or attorney, as the case may be, and by any para-professional persons employed by such trustee, professional person, or attorney, as the case may be, based on the nature, the extent, and the value of such services, the

time spent on such services, and the cost of comparable services other than in a case under this title; and

(2) reimbursement for actual, necessary expenses.

(b) There shall be paid from the filing fee in a case under chapter 7 of this title $45 to the trustee serving in such case, after such trustee's services are rendered.

(c) Unless the court orders otherwise, in a case under chapter 12 or 13 of this title the compensation paid to the trustee serving in the case shall not be less than $5 per month from any distribution under the plan during the administration of the plan.

(d) In a case in which the United States trustee serves as trustee, the compensation of the trustee under this section shall be paid to the clerk of the bankruptcy court and deposited by the clerk into the United States Trustee System Fund established by section 589a of title 28.

11 U.S.C. Section 362(h).

(h) An individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorney's fees, and, in appropriate circumstances, may recover punitive damages.

11 U.S.C. Section 502. Allowance of claims or interests.

(a) A claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest, including a creditor of a general partner in a partnership that is a debtor under chapter 7 of this title, objects.

(b) Except as provided in subsections (e)(2), (f), (g), (h) and (i) of this section, if such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount, except to the extent that —

(1) such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured;

(2) such claim is for unmatured interest;

(3) if such claim is for a tax assessed against property of the estate, such claim exceeds the value of the interest of the estate in such property;

(4) if such claim is for services of an insider or attorney of the debtor, such claim exceeds the reasonable value of such services;

(5) such claim is for a debt that is unmatured on the date of the filing of the petition and that is excepted from discharge under section 523(a)(5) of this title;

(6) if such claim is the claim of a lessor for damages resulting from the termination of a lease of real property, such claim exceeds—

(A) the rent reserved by such lease, without acceleration, for the greater of one year, or 15 percent, not to exceed three years, of the remaining term

of such lease, following the earlier of—

(i) the date of the filing of the petition; and

(ii) the date on which such lessor repossessed, or the lessee surrendered, the leased property; plus

(B) any unpaid rent due under such lease, without acceleration, on the earlier of such dates;

(7) if such claim is the claim of an employee for damages resulting from the termination of an employment contract, such claim exceeds—

(A) the compensation provided by such contract, without acceleration, for one year following the earlier of—

(i) the date of the filing of the petition; or

(ii) the date on which the employer directed the employee to terminate, or such employee terminated, performance under such contract; plus

(B) any unpaid compensation due under such contract without acceleration, on the earlier of such dates; or

(8) such claim results from a reduction due to late payment, in the amount of an other-

wise applicable credit available to the debtor in connection with an employment tax on wages, salaries, or commissions earned from the debtor.

(c) There shall be estimated for purpose of allowance under this section—

(1) any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case; or

(2) any right of payment arising from a right to an equitable remedy for breach of performance.

(d) Notwithstanding subsections (a) and (b) of this section, the court shall disallow any claim of any entity from which property is recoverable under section 542, 543, 550, or 553 of this title or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of this title, unless such entity or transferee has paid the amount, or

turned over any such property, for which such entity or transferee is liable under section 522(i), 542, 543, 550, or 553 of this title.

(e) (1) Notwithstanding subsections (a), (b), and (c) of this section and paragraph (2) of this subsection, the court shall disallow any claims for reimbursement or contribution of an entity that is liable with the debtor on or has secured the claim of a creditor, to the extent that—

(A) such creditor's claim against the estate is disallowed;

(B) such claim for reimbursement or contribution is contingent as of the time of allowance or disallowance of

such claim for reimbursement or contribution; or

(C) such entity asserts a right of subrogation to the rights of such creditor under section 509 of this title.

(2) A claim for reimbursement or contribution of such an entity that becomes fixed after the commencement of the case shall be determined, and shall be allowed under subsection (a), (b) or (c) of this section, or disallowed under subsection (d) of this section, the same as if such claim had become fixed before the date of filing of the petition.

(f) In an involuntary case, a claim arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee and the order for relief shall be determined as of the date such claim arises, shall be allowed under subsection (a), (b) or (c) of this section or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition.

(g) A claim arising from the rejection, under section 365 of this title or under a plan under chapter 9, 11, 12, or 13 of this title, of an executory contract or unexpired lease of the debtor that has not been assumed shall be determined, and shall be allowable under subsection (a), (b) or (c) of this section or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition.

(h) A claim arising from the recovery of property under section 522, 550, or 553 of this title shall be determined, and shall be allowed under subsection (a), (b), or (c) of this section, or disallowed under subsection (d) or (e) of this section, the

same as if such claim had arisen before the date of the filing of the petition.

(i) A claim that does not arise until after the commencement of the case for a tax entitled to priority under section 507(a)(7) of this title shall be determined, and shall be allowed under subsection (a), (b), or (c) of this section, or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition.

(j) A claim that has been allowed or disallowed may be reconsidered for cause. A reconsidered claim may be allowed or disallowed according to the equities of the case. Reconsideration of a claim under this subsection does not affect the validity of any payment or transfer from the estate made to a holder of an allowed claim on account of such allowed claim that is not reconsidered, but if a reconsidered claim is allowed and is of the same class as such holder's claim, such holder may not receive any additional payment or transfer from the estate on account of such holder's allowed claim until the holder of such reconsidered and allowed claim receives payment on account of such claim proportionate in value to that already received by such other holder. This subsection does not alter or modify the trustee's right to recover from a creditor any excess payment or transfer made to such creditor.

11 U.S.C. Section 523(d). Exceptions to discharge.

(d) If a creditor requests a determination of dischargeability of a consumer debt under subsection (a)(2) of this section, and such debt is discharged, the court shall grant judgment in favor of the debtor for the costs of, and a reasonable attorney's fees for, the proceeding if the court finds that the position of the creditor was not substantially justified, except that the court shall not award such costs and fees if special circumstances would make the award unjust.

28 U.S.C. Section 157. Procedures.

(b)(1) Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.

(2) Core proceedings include, but are not limited to

> (B) allowance or disallowance of claims against the estate or exemptions from property of the estate, and estimation of claims or interests for the purposes of confirming a plan under chapter 11, 12, or 13 of title 11 but not the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11.

28 U.S.C. Section 1254. Costs of appeals; certiorari; certified questions.

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case; before or after rendition of judgment or decree;

(2) By certification at any time by a court of appeals of any questions of law in any civil or criminal case as to which instructions are desired, and upon such certification the

Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

28 U.S.C. Section 1821(b).

(b) A witness shall be paid an attendance fee of $30 per day for each day's attendance. A witness shall also be paid the attendance fee for the time necessarily occupied in going to and returning from the place of attendance at teh beginning and end of such attendance or at any time during such attendance.

28 U.S.C. Section 1920. Taxation of costs.

A judge or clerk of any court of the United States may tax as costs the following:

(1) Fees of the clerk and marshal;

(2) Fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case;

(3) Fees and disbursements for printing and witnesses;

(4) Fees for exemplification and copies of papers necessarily obtained for use in the case;

(5) Docket fees under section 1923 of this title.

(6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title.

A bill of costs shall be filed in the case and, upon allowance, included in the judgment or decree.

28 U.S.C. Section 1923

(a) Attorney's and proctor's docket fees in courts of the United States may be taxed as costs as follows:

$20 on trial or final hearing (including a default judgment whether entered by the court or by the clerk) in civil, criminal, or admiralty cases, except that in cases of admiralty and maritime jurisdiction where the libellant recovers less than $50 the proctor's docket fee shall be $10;

$10 in admiralty appeals involving not over $1,000;

$50 in admiralty appeals involving not over $5,000;

$100 in admiralty appeals involving more than $5,000;

$5 on discontinuance of a civil action;

$5 on motion for judgment and other proceedings on recognizances;

$2.50 for each deposition admitted in evidence.

(b) The docket fees of Unites States attorneys and United States trustees shall be paid to the clerk of court and by him paid into the Treasury.

(c) In admiralty appeals the court may allow as costs for printing the briefs of the successful party not more than:

$25 where the amount involved is not over $1,000.00;

$50 where the amount involved is not over $5,000.00;

$75 where the amount involved is over $5,000.00.

42 U.S.C. Section 1988. Proceedings in vindication of civil rights; attorney's fees; expert fees.

(a) Applicability of statutory and common law.

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this Title, and of Title "CIVIL RIGHTS," and of Title "CRIMES," for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statues of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty.

(b) Attorney's fees

In any action or proceeding to enforce a provision of sections 1981, 1981a, 1982, 1983, 1986, and 1986 of this title, title IX of Public Law 92-318, or title VI of the Civil

Rights Act of 1964, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

(c) Expert fees

In awarding an attorney's fee under subsection (b) of this section in any action or proceeding to enforce a provision of section 1981 or 1981a of this title, the court, in its discretion, may include expert fees as part of the attorney's fee.

A.S. 09.60.010 Costs allowed prevailing party.

Except as otherwise provided by statute, the supreme court shall determine by rule or order what costs, if any, including attorney's fees, shall be allowed the prevailing party in any case.

Rule 79. Alaska Rules of Civil Procedure.

Rule 79. Costs—Taxation and Review.

(a) Cost Bill — Notice —Waiver. Within 10 days after the date shown in the clerk's certificate of distribution of the judgment, a party entitled to costs shall serve on each of the other parties to the action or proceeding a cost bill, together with a notice of the date and time of the cost bill hearing at which the clerk will tax costs. The date and time of the hearing shall be scheduled with the clerk's office and shall be not less than 3 nor more than 7 days from the date of the notice. The cost bill shall distinctly set forth each item claimed in order that the nature of the charge can be readily understood. It shall be verified by the oath of the party, or his agent or attorney or of the clerk of such attorney, stating that the items are correct, that the services have been actually and necessarily performed, and that the disbursements have been necessarily incurred in the action or proceeding. Failure of a party to

serve a cost bill and notice as required by this subdivision shall be construed as a waiver of his right to recover costs.

(b) Items Allowed as Costs. A party entitled to costs may be allowed premiums paid on the expenses of posting, undertakings, bonds or security stipulations, where the same have been furnished by reason of express requirement of law or on order of the court; the necessary expense of taking depositions for use at trial and producing exhibits; and the expense of service and publication of summons or notices, and postage when the same are served by mail; filing fees and other charges made by the clerk of the court and fees for transcripts required in the trial of a case in the superior court. In addition to the items allowed as costs by law and in these rules, a party shall be allowed any other expenses necessarily
incurred in order to enable a party to secure some right accorded him in the action or proceeding.

(c) Taxing of Costs By Clerk.

(1) At the time specified in the notice, any party may present his objections to the cost bill, either orally or in writing. He shall specify each item to which objection is made and the ground of the objection. The parties may file affidavits or other documentary evidence to support their respective positions.

(2) The clerk shall thereupon proceed to tax the costs, and shall allow the items specified in the cost bill which are proper. Within 2 days after the costs have been taxed, the clerk shall insert the amount of the same in a blank space left in the judgment or order for that purpose, and shall make a similar insertion in the copies and docket of the judgment or order. The taxing of costs by the clerk shall be final, unless modified on review as provided in this rule.

(d) Review by Court. The action of the clerk in taxing costs may be reviewed by the court at the instance of any

party upon motion and notice served not later than five days after the costs have been taxed by the clerk. When notice is served, the motion shall particularly designate each ruling of the clerk to which objection is made. Matters not so designated will not be considered by the court. The motion will be heard upon the same papers, affidavits and other documentary evidence used before the clerk, and upon such memoranda as the court may require. The court shall promptly rule on the motion.

Rule 82(a). Alaska Rules of Civil Procedure.

(a) Allowance to Prevailing Party.

(1) Unless the court, in its discretion, otherwise directs, the following schedule of attorney's fees will be adhered to in fixing such fees for the party recovering any money judgment therein:

ATTORNEY'S FEES IN AVERAGE CASES

Judgment and, if awarded, Pre-Judgment Interest	Contested	Without Trial	Non-Contested
First $25,000	20%	18%	10%
Next $75,000	10%	8%	3%
Next $400,000	10%	5%	2%
Over $500,000	10%	2%	1%

Should no recovery be had, attorney's fees may be fixed by the court in its discretion in a reasonable amount.

(2) In actions where the money judgment is not an accurate criteria for determining the fee to be allowed to the prevailing side, the court shall award a fee commensurate with the amount and value of legal services rendered. An application for attorney's fees in a default case exceeding $50,000 must specify actual fees.

(3) The allowance of attorney's fees by the court in conformance with the foregoing schedule is not to be construed as fixing the fees between attorney and client.

(4) Attorney's fees upon entry of judgment by default shall be determined by the clerk. In all other matters the court shall determine attorney's fees. Awards not pursuant to the schedule set forth in subparagraph (1) of this Rule shall be made only upon motion.

(5) A motion for attorney's fees must be filed within 10 days after the date shown in the clerk's certificate of distribution on the judgment as defined by Civil Rule 58.1. Failure to move for attorney's fees within 10 days or such additional time as the court may allow, shall be construed as a waiver of the party's right to recover attorney's fees.